

**CONSTITUTION**

**of the**

**LA POSTA BAND OF MISSION INDIANS  
LA POSTA INDIAN RESERVATION, CALIFORNIA**

**ORIGINAL**

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LA POSTA BAND OF MISSION INDIANS

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**CONSTITUTION  
of the  
LA POSTA BAND OF MISSION INDIANS  
LA POSTA INDIAN RESERVATION, CALIFORNIA**

**PREAMBLE**

We, the members of the La Posta Band of Mission Indians ("Band"), a federally recognized band of Kumeyaay Indians, do hereby adopt this Constitution in order to:

Govern ourselves under our own laws and customs for the common good and well-being of the Band and its members; and

Improve, develop and protect our lands and natural resources for ourselves and our children; and

Ensure the political integrity of the Band; and

Preserve, secure and exercise all the inherent sovereign rights and powers of the Band.

This Constitution shall supersede the Constitution of the La Posta Band of Mission Indians, La Posta Indian Reservation, California, adopted January 26, 1973 and approved by the Secretary of the Interior on May 3, 1973, and shall govern the Band upon ratification pursuant to Article XII hereof and approval by the Secretary of the Interior or his designated representative.

**ARTICLE I  
NAME**

The Band is and shall hereafter be known as the La Posta Band of Mission Indians.

**ARTICLE II  
TERRITORY AND JURISDICTION**

**Section 1. Territory.**

The territory of the Band includes all lands within the exterior boundaries of the La Posta Indian Reservation as established by Executive Order dated December 29, 1891; Trust Patents issued February 10, 1893, November 28, 1910 and April 5, 1911; Departmental Orders dated February

28, 1895 and February 2, 1907; and Public Law 100-581, approved November 1, 1988; to any and all lands held by the Band; to any additional lands acquired by the Band or the United States for the benefit of the Band; and any other such territory as may hereafter be added thereto. Such lands include, without limitation, surface rights, subsurface rights, tenements, hereditaments, water rights and accretions, and air space.

## **Section 2. Jurisdiction.**

The Band has jurisdiction over all persons, property, lands, water, air space, resources and activities occurring within the boundaries of the Reservation and on any and all other lands within the jurisdiction of the Band, notwithstanding the issuance of any patent or right of way, to the fullest extent permitted by federal law. Nothing in this Article shall be construed to limit the ability of the Band to exercise its jurisdiction based upon its inherent sovereignty as an Indian tribe in accordance with applicable law.

## **ARTICLE III MEMBERSHIP**

**Section 1. Membership Defined.** The membership of the Band shall include the following:

- (A) All persons who qualified for and were accepted into membership in the Band under the original Constitution adopted by the Band on January 26, 1973 and approved by the Secretary of the Interior on May 3, 1973.
- (B) All persons whose names appear on the Band's membership roll dated April 5, 1982, and the supplemental roll certified November 16, 2001, as the same now exists or may be further supplemented pursuant to a duly enacted enrollment ordinance.
- (C) All lineal descendants of the persons identified in sections 1(a) and 1(b) above.
- (D) Persons who are adopted by the Band in accordance with a duly enacted adoption ordinance.

**Section 2. Limitations.** No person shall be a member of the La Posta Band of Mission Indians who (a) is officially enrolled with or is a recognized member of some other tribe or band of Indians, unless the person in question has first relinquished his membership in the other tribe and has provided the Band with satisfactory evidence that his name has been stricken from the roll of the other tribe; or (b) has relinquished in writing his membership in the La Posta Band of Mission Indians.

**Section 3. Membership Roll.** The official membership roll shall be prepared and maintained in accordance with a duly enacted enrollment ordinance.

#### **ARTICLE IV GOVERNING BODIES**

##### **Section 1. General Council.**

- (A) Reaffirmation of General Council. The Band hereby reaffirms the existence of the General Council, consisting of all adult members, eighteen years of age or older, of the Band.
- (B) Meetings. Regular meetings of the General Council shall take place at least quarterly. Special meetings may be called by the Chairperson, or by written request of two (2) General Council members.
- (C) Quorum. A quorum shall exist if five (5) members of the General Council are present. A quorum is required at all times during all meetings to conduct official business of the General Council.
- (D) Voting. The General Council shall make decisions by a majority vote of those present, unless otherwise provided in this Constitution or any duly enacted ordinance of the Band. The General Council may vote by voice vote unless the Chairperson or any two (2) members of the General Council request a vote by secret ballot. All members of the General Council shall have the right to vote on any matter brought before it.

##### **Section 2. Tribal Council.**

- (A) Establishment of Tribal Council; Composition. The Band hereby establishes the Tribal Council, composed of five (5) members, including a Chairperson, a Vice Chairperson, a Secretary-Treasurer, and two Council Members.
- (B) Election and Qualifications. The members of the Tribal Council shall be elected pursuant to rules and regulations embodied in the duly enacted election ordinance in effect at the time an election is called. All adult members of the Band, eighteen (18) years of age or older, shall be qualified to vote in such elections, and may hold office on the Tribal Council subject to qualification requirements set forth in the election ordinance. An initial election to fill all positions on the Tribal Council shall be held within ninety (90) days of the effective date of this Constitution. Thereafter, the Chairperson and Secretary-Treasurer shall be elected in odd numbered years, and the Vice Chairperson and two Council Members shall be elected in even-numbered years.

- (C) Terms of Office. Each member of the Tribal Council shall hold office for a term of two (2) years, the terms to be staggered so that a regular election takes place each year, except that the Vice Chairperson and two Council Members elected at the initial election held pursuant to section 2(B) above shall hold office for one (1) year. Limitations on the number of consecutive terms an individual can serve on the Tribal Council may be embodied in a duly enacted ordinance.
- (D) Meetings. The Tribal Council shall hold regular meetings at least monthly. Special meetings of the Tribal Council may be called by the Chairperson or by written request of two (2) members of the Tribal Council.
- (E) Quorum. A quorum shall exist if three (3) members of the Tribal Council are present. A quorum is required at all times during all meetings in order to conduct official business of the Tribal Council.
- (F) Voting. Except as otherwise provided in this Constitution or any duly enacted ordinance, the Tribal Council shall make decisions by a majority vote of those present, other than the Chairperson, who shall only vote in the event of a tie. The Tribal Council may vote by voice vote unless any two (2) members of the Tribal Council request a vote by secret ballot.
- (G) Conflict of Interest. Any member of the Tribal Council who may have a direct personal or financial interest in any matter before the Tribal Council not similarly shared by all members of the Tribal Council shall not vote on such matter without the consent of the remaining members of the Tribal Council. A Council member shall reveal any direct personal or financial interest to the other members of the Tribal Council prior to any vote on such matter, and failure to do so may constitute grounds for suspension or removal from office under section 2(H) below.
- (H) Removal and Suspension From Office.
  - (1) The Tribal Council may remove or suspend a Council member from office for:
    - (a) failing to attend three (3) consecutive duly called meetings, whether regular or special, absent good cause as defined by ordinance;
    - (b) converting Tribal property or monies without authorization through the omission or misrepresentation of facts;
    - (c) concealing a direct personal or financial interest in any matter on which the Council member votes, as described in Section 2(G)

above; or

- (d) being convicted, while in office, by any court of competent jurisdiction for: (i) any felony; or (ii) contempt of court; or (iii) three (3) misdemeanors.
- (2) Removal or suspension proceedings under this Section shall take place pursuant to rules and regulations embodied in a duly enacted ordinance, which shall afford full due process rights to any Council member who is the subject of such proceedings, including a written statement of the charges, the right to respond to those charges, and the right to present witnesses and other evidence in his or her defense.
- (I) Recall. Any three (3) members of the Band of voting age shall have the power to initiate recall proceedings against a member of the Tribal Council following procedures embodied in a duly enacted ordinance of the Band.
- (J) Vacancies. If any member of the Tribal Council should die, resign in writing, or be removed or recalled from office, the Tribal Council shall declare that member's position vacant. The Tribal Council shall fill any such vacancy by calling a special election pursuant to rules and regulations embodied in a duly enacted ordinance, unless less than ninety (90) days remain in the term of such office, in which case the General Council shall by Resolution fill the vacant position at a meeting called as soon as possible after the position is vacated. Any person who fills a vacant position shall serve out the term of the person being replaced.

## ARTICLE V POWERS

**Section 1. Tribal Council Authority.** Subject to the express limitations contained in this Constitution and applicable laws of the United States, the Tribal Council shall have all authority vested in the Band through its inherent sovereignty and Federal law and shall, in accordance with established customs of the Band, exercise the following powers:

- (A) To represent the Band and act in all matters that concern the welfare of the Band, and to make decisions not inconsistent with or contrary to this Constitution or other applicable Tribal or Federal law;
- (B) To negotiate and make contracts with Federal, State and local governments;
- (C) To prevent or veto the sale, disposition, lease or encumbrance of lands, interests in lands, or other assets of the Band without the formal consent of the Band;



- (D) To manage, lease, contract or otherwise deal with assets and community resources of the Band, subject to General Council approval as provided in Section 2 below;
- (E) To protect and preserve the natural and cultural resources of the Band through the adoption of appropriate ordinances and regulations;
- (F) To regulate the use and disposition of all land within the jurisdiction of the Band, subject to General Council approval as provided in Section 2 below;
- (G) To acquire, purchase or accept any land or property for and on behalf of the Band, subject to General Council approval as provided in Section 2 below;
- (H) To request the Secretary of the Interior to confer trust or reservation status on lands reserved for, grant to, or acquired by the Band;
- (I) To negotiate and issue leases for business purposes, and to otherwise regulate business activities within the jurisdiction of the Band, subject to General Council approval as provided in Section 2 below;
- (J) To manage all economic affairs and enterprises of the Band, subject to General Council approval as provided in Section 2 below;
- (K) To levy and collect taxes, duties, fees and assessments;
- (L) To appropriate and regulate the use of funds of the Band, subject to General Council approval as provided in Section 2 below;
- (M) To enact ordinances providing for the removal or exclusion of any non-member of the Band whose presence may be injurious to the members of the Band, and to prescribe conditions upon which non-members may remain within the territory of the Band;
- (N) To employ legal counsel;
- (O) To establish a judicial system and/or other mechanism(s) for the resolution of disputes and the interpretation and enforcement of Tribal law, subject to General Council approval as provided in Section 2 below.
- (P) To provide for the participation of the Band in intertribal consortia for purposes that benefit the Band and its members.
- (Q) To enact ordinances consistent with this Constitution governing future membership, loss of membership and the adoption of members, subject to General

Council approval as provided in Section 2 below;

- (R) To regulate its own procedures, subject to General Council approval as provided in Section 2 below;
- (S) To appoint subordinate committees, commissions, boards, officials and employees not otherwise provided for in this Constitution, and to prescribe their salaries, tenure, duties, policies and procedures;
- (T) To establish and regulate subordinate organizations for economic and other purposes;
- (U) To accept grants and donations from any person, organization, State or the United States;
- (V) To effectuate limited waivers of sovereign immunity, subject to General Council approval as provided in Section 2 below;
- (W) To take any and all actions as are necessary and proper to carry into effect any of the foregoing powers and duties, including those powers and duties not enumerated above, and all other powers and duties now or hereafter delegated to the Tribal Council, or vested in the Band through its inherent sovereignty, subject to General Council approval as provided in Section 2 below.

**Section 2. General Council Review and Approval Authority.** The following actions of the Tribal Council shall not be effective unless approved by affirmative majority vote of the General Council and, if mandated by Federal law, the Secretary of the Interior or her authorized representative:

- (A) the transfer, encumbrance or disposition of any Tribal land;
- (B) the distribution of any Tribal trust assets;
- (C) the expenditure, appropriation or obligation of Tribal funds for any purpose when the amount so spent, appropriated or obligated exceeds five hundred dollars (\$500);
- (D) the enactment, amendment or repeal of any ordinance governing the emergency powers of the Tribal Council (see Section 3 below) or the qualifications, duties, election, term limits, removal, suspension or recall of any member of the Tribal Council or other Tribal official;
- (E) the enactment, amendment or repeal of any ordinance governing membership;

- (F) the enactment, amendment or repeal of any ordinance governing the creation or operation of a Tribal or inter-tribal judicial system or other mechanism for resolution of disputes and/or the interpretation and enforcement of Tribal law;
- (G) the waiver of sovereign immunity for any purpose.

### **Section 3. Emergency Powers of the Tribal Council.**

- (A) Regarding any of the actions identified as requiring General Council approval under Section 2 above, the Tribal Council may exercise emergency powers to act on behalf of the Band without the specific authorization of the General Council when the Tribal Council establishes that an emergency situation exists.
- (B) Emergency situations are those requiring immediate attention in order to prevent injury, damage or loss to, and protect, the interests of the Band or any of its members. Emergency situations and the specific scope of Tribal Council authority under this Section 3 may be further defined by duly enacted ordinance approved by the General Council.
- (C) In the event the Tribal Council exercises its emergency powers, it shall notify the General Council at the earliest possible opportunity of the emergency situation and the action taken. Further responsibility of the Tribal Council to the General Council with respect to the exercise of emergency powers by the Tribal Council may be defined in a duly enacted ordinance approved by the General Council.

## **ARTICLE VI ORDINANCES AND RESOLUTIONS**

**Section 1. Ordinances.** All final decisions on matters of permanent interest shall be embodied in ordinances enacted by the Tribal Council, subject, as provided for in this Constitution, to General Council approval. Such enactments shall be embodied in a Tribal Code which shall be maintained at the Tribal Office and made available during normal business hours for inspection by Band members and other persons who are or may be subject to the provisions of such ordinances.

**Section 2. Resolutions.** All final decisions on matters of temporary interest where a formal expression is needed shall be embodied in resolutions, noted in the minutes or separately, and shall be maintained at the Tribal Office and made available during normal business hours for inspection by Band members and other persons who are or may be subject to the provisions of such resolutions. Resolutions may be passed by the Tribal Council or by the General Council.

**Section 3. Form.** All ordinances, and resolutions embodied in documents separate from minutes, shall be dated and numbered and shall include a certificate showing the presence of a quorum and

the number of members voting for and against the proposed enactment.

**Section 4. Review.** The Tribal Council shall submit Tribal laws and enactments for review, comment and approval by the Secretary of the Interior or his authorized representative if required by Federal law or otherwise deemed appropriate by the Tribal Council.

## **ARTICLE VII BILL OF RIGHTS**

In exercising its powers of self-government, the Band shall not:

- (A) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for redress of grievances;
- (B) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (C) subject any person for the same offense to be twice put in jeopardy;
- (D) compel any person in any criminal case to be a witness against himself;
- (E) take any private property for public use without just compensation;
- (F) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;
- (G) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of \$5,000, or both;
- (H) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (I) pass any bill of attainder or ex post facto law; or
- (J) deny to any person accused of an offense punishable by imprisonment the right,

upon request, to a trial by jury of not less than six persons.

## **ARTICLE VIII SOVEREIGN IMMUNITY**

**Section 1. Band and Employees Immune from Suit.** Nothing in this Constitution is intended to be, nor shall any provision be construed to be, a waiver of any aspect of the sovereign immunity of the La Posta Band of Mission Indians. The Band hereby declares that, in exercising its self-determination and sovereignty to the fullest extent provided by law, the Band is immune from suit except in the event and only to the extent that the Band expressly waives sovereign immunity. No employee of the Band or Tribal Council member acting within the scope of his duties or authority is subject to suit.

**Section 2. Waivers of Sovereign Immunity.** To be effective, an express waiver of sovereign immunity for any purpose must be embodied in an ordinance duly enacted by the Tribal Council, or a lease or other contract, approved by an affirmative majority vote of the General Council.

## **ARTICLE IX SAVINGS CLAUSE**

All enactments of the Band adopted before the effective date of this Constitution shall continue in effect to the extent that they are consistent with this Constitution.

## **ARTICLE X SEVERABILITY**

If any provision of this Constitution shall in the future be declared invalid by a court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

## **ARTICLE XI AMENDMENT**

This Constitution may be amended by a majority vote of the qualified voters of the Band voting at an election called for that purpose; provided, however, that at least fifty percent (50%) of those entitled to vote shall vote in such election.



UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS  
Southern California Agency  
1451 Research Park Dr., Suite 100  
Riverside, CA 92507-2154  
Telephone (951) 276-6624 Telefax (951) 276-6641

IN REPLY REFER TO:

Tribal Operations  
3702-P5 La Posta

Ms. Gwendolyn Parada, Chairperson  
LA POSTA BAND OF MISSION INDIANS  
P.O. Box 1120  
Boulevard, CA 91905

Dear Ms. Parada:

This will serve as official notification to the LA POSTA BAND OF MISSION INDIANS that the CONSTITUTION was officially approved by the Acting Regional Director, Dale Risling, Pacific Regional Office, Sacramento, California on December 13, 2005.

Enclosed at the direction of the Pacific Regional Office, are the following documents for the tribal files:

1. The original September 2, 2005, authorizing letter.
2. The original of this approval letter.
3. The original completed Certificate of Results of Election.
4. The original Certificate of Approval.
5. Official list of qualified voters.
6. Copy of original Constitution

Any additional questions may be directed to the Branch of Tribal Operations at (951) 276-6624 extension 231.

Sincerely,

James J. Fletcher  
Superintendent

ACTING

Enclosure(s)

cc: James Hill, Business Manager  
Tribal Operations/Pacific Region

TAKE PRIDE  
IN AMERICA



IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

### CERTIFICATE OF APPROVAL

The Constitution of the La Posta Band of Mission Indians, La Posta Indian Reservation, California, which was adopted by the qualified voters of the Band on December 5, 2005, is hereby approved pursuant to the authority delegated to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended and delegated to the Deputy Commissioner of Indian Affairs by 230 D.M. 2.4 and redelegated to me by Memorandum of Agreement dated August 16, 1994.

Acting

Regional Director

Date

12/13/05

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IN AMERICA





IN REPLY REFER TO:

## United States Department of the Interior

BUREAU OF INDIAN AFFAIRS  
Pacific Regional Office  
2800 Cottage Way  
Sacramento, California 95825

SEP 02 2005

James Fletcher, Superintendent  
Bureau of Indian Affairs  
Southern California Agency  
1451 Research Park Dr., Suite 100  
Riverside, CA 92507

Dear Mr. Fletcher:

By your memorandum dated August 16, 2005, you transmitted to this office a letter dated August 8, 2005, from Gwendolyn Parada, Chairperson of the La Posta Band of Mission Indians (Band), requesting that the Bureau of Indian Affairs authorize the conduct of a Secretarial election to permit the qualified voters of the Tribe to adopt or reject the proposed Constitution. Your memorandum and Ms. Parada's letter was received at the Pacific Region on August 22, 2005.

After reviewing Ms. Parada's letter, we note that the Band accepts our recommendation to replace the word "Counsel" with the word "Council" in the heading of Article IV, Section 1. Therefore, this change was made and is reflected in the final version of the Band's proposed Constitution on page 3. Further, the Band declined to revise the Preamble of proposed revised Constitution to refer to Article VIII-Amendment of the Current Constitution. However, while it might be preferable to revise as suggested, the Band's standard specified in the proposed revised Constitution would be acceptable; since it appears that the minimum number of voters established by Article XII-Ratification of the proposed revised Constitution is consistent with the minimum number specified in Article VIII-Amendment of the current Constitution.

Therefore, pursuant to the authority of the Secretary of the Interior, redelegated to me by 209 DM 8, 230 DM 1, and 3 IAM 4, you are hereby authorized to call and conduct the requested Secretarial election on the enclosed authorized version of the proposed Constitution of the La Posta Band of Mission Indians. Voting shall be in accordance with Title 25 of the Code of Federal Regulations, Part 81 (25 CFR § 81 *et seq.*).

We call your attention to C.F.R. §§ 81.11, 81.12, 81.13, and 81.14 regarding the need to develop a list of persons eligible and registered to vote and the deadlines entailed. The registration list must be posted at least 20 days prior to the election, which does not include the dates of posting and Election Day. The date of the election will be set by you in cooperation with tribal officials and will not be less than 30 days or more than 60 days from the date for posting notices of the election.

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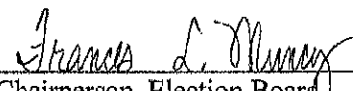




CONSTITUTION OF THE  
LA POSTA BAND OF MISSION INDIANS  
LA POSTA INDIAN RESERVATION, CALIFORNIA

CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an election authorized by the Regional Director, Pacific Region, Bureau of Indian Affairs, on Sept. 2, 2005, the attached proposed Constitution of the La Posta Band of Mission Indians, La Posta Indian Reservation, California, was submitted to the qualified voters of the Tribe and was on Dec. 2, 2005, duly adopted / ~~rejected~~ by a vote of 6 for and 0 against, and 0 cast ballots found to be spoiled or mutilated, in an election in which at least fifty percent (50%) of the 7 entitled to vote cast their votes in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

  
Chairperson, Election Board

  
Election Board Member

  
Election Board Member

\_\_\_\_\_  
Election Board Member

Date: